

NO. 80450-8

(consolidated with *Emily Lane Homeowner's Ass'n v. Colonial Dev., LLC*,
No. 80459-1)

SUPREME COURT OF THE STATE OF WASHINGTON

CHADWICK FARMS OWNERS ASSOCIATION,
a Washington nonprofit corporation,

Respondent,

v.

FHC LLC, a Washington limited liability company,

Petitioner,

v.

AMERICA 1ST ROOFING & BUILDERS, INC., a
Washington corporation; CASCADE UTILITIES, INC., a
Washington corporation; MILBRANDT ARCHITECTS, INC.,
P.S., a Washington corporation; PIERONI ENTERPRISE, INC.,
d/b/a PIERONI'S LANDSCAPE CONSTRUCTION, a
Washington corporation; TIGHT IS RIGHT CONSTRUCTION,
INC., a Washington corporation; GUTTER KING, INC.,
a Washington corporation,

Respondents.

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CHADWICK FARMS OWNERS ASSOCIATION'S
SUPPLEMENTAL BRIEF

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I. INTRODUCTION

Chadwick Farms Owners Association (“Chadwick Farms”) sued FHC LLC (“FHC”), an administratively dissolved LLC that, during the pendency of Chadwick Farms’ claims, failed to seek reinstatement within two years of its administrative dissolution. FHC later brought third-party claims against various subcontractors. The trial court dismissed all claims on summary judgment. The Court of Appeals reversed the dismissal of Chadwick Farms’ claims against FHC, finding that RCW 25.15.303, the 2006 amendment to the Washington Limited Liability Company Act (the “Act”) providing a three-year survival period for bringing claims against a dissolved limited liability company (“LLC”), applies retroactively to permit actions against an LLC even when that company’s certificate of formation has been cancelled. Chadwick Farms Owners Ass’n v. FHC, LLC, 139 Wn. App. 300, 312, 160 P.3d 1061 (2007), rev. granted, 2008 Wash. LEXIS 383 (2008). But, the court affirmed the dismissal of FHC’s third-party claims, concluding that RCW 25.15.270(6) mandates an administratively dissolved LLC to wind up its affairs by “[t]he expiration of two years after the effective date of dissolution under RCW 25.15.285 without reinstatement of the limited liability company.”¹ Id.

¹ The Court of Appeals also reversed the trial court’s failure to permit Chadwick Farms to amend its complaint to add a company member and manager as defendants for their failure to properly wind up FHC’s affairs. FHC has not sought review of that holding.

As will be shown, the Court of Appeals correctly reinstated Chadwick Farms' claims against FHC, but erroneously interpreted RCW 25.15.270(6) to affirm the dismissal of FHC's third-party claims.² Chadwick Farms asks this Court to hold that: (1) the 2006 enactment of RCW 25.15.303 applies retroactively and permits actions against an LLC even when its certificate of formation has been cancelled; and (2) under the Act, even without the 2006 amendment, an administratively dissolved LLC continues to exist for purposes of winding up, such that it can defend and prosecute suits, even after expiration of the two-year reinstatement period and until a certificate of cancellation is filed.

II. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly reverse the dismissal of Chadwick Farms' claims against FHC on the ground that RCW 25.15.303, the 2006 amendment to the Act providing a three-year survival period within which claims against a dissolved LLC may be brought, applies retroactively and permits actions against an LLC even when that company's certificate of formation has been cancelled?

2. Should the Court of Appeals' reversal of the dismissal of Chadwick Farms' claims also be affirmed because the trial court erred as a

² Chadwick Farms has an interest in the reinstatement of FHC's third-party claims against various subcontractors in order to preserve FHC's rights to coverage as an additional

matter of law in concluding that, under the Act as it existed before the enactment of RCW 25.15.303 in 2006, once two years had passed after FHC had been administratively dissolved and failed to seek reinstatement, it ceased to exist, such that any claims against it, including Chadwick Farms' already pending claims, could no longer be pursued?

3. Did the Court of Appeals erroneously conclude that RCW 25.15.270(6) mandates that an administratively dissolved LLC wind up its affairs by "[t]he expiration of two years after the effective date of dissolution under RCW 25.15.285 without reinstatement of the limited liability company," and thus erroneously affirm the dismissal of FHC's third-party claims against various subcontractors?

III. RELEVANT FACTS AND PROCEDURAL HISTORY

A. The Parties and Their Claims.

FHC, a Washington limited liability company, was formed to construct Chadwick Farms, a condominium project. CP 2, 76 at ¶ 2. FHC ceased operations after completing construction. CP 2, 76 at ¶ 3. Because FHC failed to file an annual report or license renewal, the Secretary of State issued a Certificate of Administrative Dissolution on March 24, 2003. CP 13. On August 18, 2004, Chadwick Farms sued FHC, alleging

insured under third-party defendants' insurance, see CP 172, 175-76, so that FHC has sufficient insurance to pay Chadwick Farms' damages.

that FHC was responsible for multiple construction defects and that, as a result of FHC's breach of warranties, the Chadwick Farms condominiums and common elements suffered water intrusion. CP 121-25.

On March 24, 2005, seven months after Chadwick Farms filed suit, two years had passed since the Secretary of State issued the Certificate of Administrative Dissolution for FHC. FHC had not filed an application for reinstatement by that date, CP 76 at ¶ 4, nor did it file a certificate of cancellation thereafter, see CP 166-68, 169-73, 176 at ¶ 7. Then, on April 5, 2005, FHC answered the complaint, denying Chadwick Farms' claims, CP 126-29, and alleging that it "is no longer in business and is a dissolved entity," CP 127 at ¶ 2. FHC also asserted affirmative defenses, and reserved the right to bring third-party claims. CP 127-28.

On May 6, 2005, over a month after the two-year reinstatement period had passed, FHC received leave to file a third-party complaint against America 1st Roofing & Builders, Cascade Utilities, Milbrandt Architects, Pieroni Enterprise, and Tight Is Right Construction. CP 131-33, 137-38. On September 27, 2005, it received leave to file an amended third-party complaint against Gutter King. See CP 211-13, 214-27.

B. The Summary Judgment Proceedings.

In August 2005, FHC moved for summary judgment dismissal of Chadwick Farms' claims, CP 1-8, 9-19; see also CP 67-76, asserting that,

as of March 24, 2005 (seven months after Chadwick Farms filed suit), when two years had passed after FHC was administratively dissolved, it ceased to exist and claims against it could no longer be pursued, CP 4-7, 67-72.³ FHC cited RCW 25.15.080 and 25.15.290(4) for the proposition that its certificate of formation was cancelled by operation of law on March 24, 2005, two years after its administrative dissolution.⁴ CP 5. FHC also cited RCW 25.15.070 and 25.15.295 for the proposition that, once its certificate of formation was cancelled, its winding up period ended and it ceased to exist.⁵ Id.

³ After FHC moved for summary judgment, third-party defendant Pieroni, joined by third-party defendants Milbrandt and Cascade, moved to dismiss FHC's third-party claims on the ground that, when FHC filed its first third-party complaint on May 11, 2005, it did not have standing to bring or prosecute its third-party claims. CP 20-28, 46-47, 50-51. FHC agreed that, if its summary judgment motion was granted, then the third-party defendants' motions should also be granted, but asserted that, if its motion was denied, the third-party defendants' motions should also be denied. CP 60-64. Cascade replied that whether FHC's motion was denied was irrelevant to the third-party defendants' motions because Chadwick Farms could not maintain FHC's form as a limited liability company, but FHC could, if it wanted to pursue claims against Cascade or anyone else. CP 77-82. Pieroni replied that Chadwick Farms' arguments opposing FHC's motion did not apply to the third-party defendants, because FHC allowed its certificate of formation to be cancelled and had not brought its third-party claims before its certificate was cancelled. CP 91-93; see also CP 88-90.

⁴ FHC relied on a portion of RCW 25.15.080 providing that "[a] certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in RCW 25.15.290 . . .," and on RCW 25.15.290(4), providing that, if an application for reinstatement is not made within two years after the effective date of administrative dissolution, "the secretary of state shall cancel the limited liability company's certificate of formation." See CP 5.

⁵ RCW 25.15.070(2)(c) provides that: "A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation." RCW 25.15.295 contains provisions governing the winding up of an LLC.

Chadwick Farms then obtained an unopposed temporary restraining order enjoining FHC from filing a certificate of cancellation with the Secretary of State. CP 166-68, 169-73, 174-93. It did so to prevent FHC from compromising Chadwick Farms' right to pursue this action, or from losing any rights FHC may have had, as an additional insured under third-party defendants' insurance, to coverage for its liabilities to Chadwick Farms. CP 172, 175-76. Chadwick Farms relied in part, CP 170, upon RCW 25.15.295(2), which provides:

Upon dissolution of a limited liability company *and until the filing of a certificate of cancellation* as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits [Emphasis added.]

Chadwick Farms opposed FHC's summary judgment motion, urging that FHC's interpretation of the Act would render several of its provisions meaningless and lead to absurd results, such as allowing LLCs to evade their liabilities and debts. CP 55-56. Chadwick Farms pointed out, *inter alia*, that (1) under RCW 25.15.285(3), an LLC continues in existence and may wind up its business affairs after administrative dissolution;⁶ (2) under RCW 25.15.295(2), "[u]pon dissolution of a limited

⁶ RCW 25.15.285(3) provides that "[a] limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs."

liability company *and until the filing of a certificate of cancellation* as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits . . . ;" (3) under the second sentence of RCW 25.15.080, "[a] certificate of cancellation shall be filed in the office of the secretary of state to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company . . . ;" (4) under RCW 25.15.300(2), "[a] limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company . . . ;" and (5) there was no evidence that a certificate of cancellation had ever been filed or that FHC ever completed the winding up process or made reasonable provision to pay all known claims and obligations.⁷ CP 52-56.

On September 30, 2005, the trial court granted FHC's motion for summary judgment dismissing Chadwick Farms' claims. CP 102-04. It also dismissed FHC's third-party claims against Cascade Utilities, Milbrandt Architects and Pieroni Enterprise. CP 105-07, 98-101, 108-12.

⁷ FHC neither paid nor made reasonable provision for payment of Chadwick Farms' claims, which had been filed and were known to FHC more than seven months before the date FHC claims it ceased to exist and could no longer be sued.

On September 27, 2005, the trial court had granted FHC leave to file an amended third-party complaint to name Gutter King as a third-party defendant. CP 211-13. On October 5, 2005, after obtaining summary judgment on the ground that it had ceased to exist as a legal entity and thus was not capable of being sued (or suing), FHC filed and served on Gutter King the amended third-party complaint. CP 214-27, 308-09.

C. The Appeal.

Chadwick Farms appealed the dismissal of its claims against FHC, CP 228-36, 246-73, and FHC cross-appealed the dismissal of its third-party claims, CP 276-300. Before briefing, the Legislature enacted SB 6531, amending the Act to add a new survival of claims provision, RCW 25.15.303, which became effective on May 6, 2006, and provides:

The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced within three years after the effective date of dissolution. Such an action or proceeding against the limited liability company may be defended by the limited liability company in its own name.

As noted above, the Court of Appeals reinstated Chadwick Farms' claims, but affirmed the dismissal of FHC's third party claims. This Court granted FHC's petition for review.

IV. ARGUMENT

- A. Even Before RCW 25.15.303 Was Enacted, an Administratively Dissolved LLC Did Not Cease to Exist for Winding Up Purposes, and Could Continue Winding Up Its Affairs, Including Defending and Prosecuting Suits, After the Two-Year Reinstatement Period Expired and Until the Filing of a Certificate of Cancellation.

Contrary to the Court of Appeals' conclusion, an administratively dissolved LLC does not cease to exist, and its winding up period does not automatically end, such that it can no longer sue or be sued, just because two years elapse without reinstatement after the date of administrative dissolution. Although the Act is not a model of clarity, a reading of all of its provisions in *pari materia*, without rendering any word or provision meaningless, and construing them to avoid absurd or fundamentally unjust results as the law requires, e.g., City of Pasco v. Napier, 109 Wn.2d 769, 773, 755 P.2d 170 (1988); State v. Contreras, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994); State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282, cert. denied, 531 U.S. 984 (2000); Kilian v. Atkinson, 147 Wn.2d 16, 21, 50 P.3d 638 (2002), should have led the Court of Appeals to reverse not only the dismissal of Chadwick Farms' claims against FHC, but also the dismissal of FHC's third-party claims against the subcontractors.

The administrative dissolution of an LLC does not end its existence. Rather, under RCW 25.15.285(3): "A limited liability company administratively dissolved continues its existence but may not

carry on any business except as necessary to wind up and liquidate its business and affairs.” Under RCW 25.15.295(2) and 25.15.300(2), such winding up includes prosecuting and defending suits and paying or making reasonable provision to pay all claims and obligations, including contingent, conditional, and unmatured ones, known to the LLC.

Nowhere in the Act is any specific time limit placed on how long an LLC has after it is dissolved, whether administratively or otherwise, to complete the winding up of its affairs. That RCW 25.15.290(4) provides that the Secretary “shall cancel” an LLC’s certificate of formation if the LLC does not seek reinstatement within two years after its administrative dissolution,⁸ does not mean that the LLC cannot continue winding up its affairs, including prosecuting and defending suits and paying known claims and obligations, past that two-year mark. The Act does not specify how, when, or in what form the Secretary of State is ultimately to accomplish the cancellation of the certificate of formation of an administratively dissolved LLC that does not seek reinstatement within two years. Nor does the Act indicate that an administratively dissolved

⁸ RCW 25.15.290(4) states:

If an application for reinstatement is not made within the two-year [reinstatement] period set forth in subsection (1) of this section, or if the application made within this period is not granted, the secretary of state shall cancel the limited liability company’s certificate of formation.

LLC ceases to exist for purposes of winding up, or that any claims by or against it can no longer be brought, or immediately abate, upon the expiration of the two-year reinstatement period. What RCW 25.15.290(4) means when it provides that the Secretary of State “shall cancel” the certificate of formation after the two-year reinstatement has passed without reinstatement is that the LLC can no longer be reinstated, not that it can no longer finish winding up its affairs.

No Certificate of Cancellation was apparently ever filed with respect to FHC. Nevertheless, in concluding that FHC lacked standing to prosecute claims against the subcontractors once two years has passed after FHC’s administrative dissolution without reinstatement, the Court of Appeals ignored the existing statutory framework within which a dissolved LLC may wind up its affairs, as set forth in RCW 25.15.080, 25.15.295(2), and 25.15.070(2)(c).⁹

The second sentence of RCW 25.15.080 addresses how a cancellation of a certificate of formation is to be accomplished, and RCW 25.15.295(2) addresses when the persons winding up an LLC can no longer, as part of winding up its affairs, prosecute or defend suits in the company’s name. According to those statutes, a certificate of cancellation

⁹ RCW 25.15.070(2)(c) provides that an LLC’s existence as a separate entity “shall continue until cancellation of the limited liability company’s certificate of formation.”

must be filed in the Secretary of State's office to accomplish the cancellation of a certificate of formation upon the dissolution and completion of the winding up process, and persons winding up the LLC's affairs can continue to do so, including prosecuting and defending suits, until the filing of the certificate of cancellation. RCW 25.15.080 provides:

A certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in RCW 25.15.290, or upon the filing of articles of merger if the limited liability company is not the surviving or resulting entity in a merger. *A certificate of cancellation shall be filed in the office of the secretary of state to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company.* . . . [Emphasis added.]

RCW 25.15.295(2) in turn provides that:

Upon dissolution of a limited liability company *and until the filing of a certificate of cancellation* as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company. [Emphasis added.]

Thus, under RCW 25.15.295(2), a dissolved LLC may defend and prosecute suits until the filing of a certificate of cancellation, which, under RCW 25.15.080, shall be filed "to accomplish the cancellation of a certifi-

cate of formation upon the dissolution and the completion of winding up of a limited liability company.” FHC does not lack standing to prosecute its claims against the third-party defendants because, although administratively dissolved, FHC continues to exist for winding up purposes until it files a certificate of cancellation. To hold, as the Court of Appeals did, that the Act requires an administratively dissolved LLC that does not reinstate itself to complete winding up its affairs within two years after the administrative dissolution, ignores the practicalities and reality that successful completion of the winding up process, as contemplated by RCW 25.15.295(2), may necessarily require an LLC to bring third-party claims in connection with its defense of claims pending against it.

Nowhere does the Act state that the winding up of an administratively dissolved LLC’s affairs, which includes prosecuting and defending suits, must be completed on or before the expiration of the two-year reinstatement period. Indeed, RCW 25.15.270 indicates the opposite, when it provides that an LLC is dissolved and its affairs shall be wound up “*upon*”, not *by* (or as of) the expiration of two years after the effective date of an administrative dissolution without reinstatement, in the same way that an LLC is dissolved and its affairs shall be wound up “*upon*”, not *by* (or as of), the written consent of all members, or the entry of a decree of judicial dissolution. RCW 25.15.270 provides in pertinent part:

A limited liability company is dissolved and its affairs shall be wound up *upon* the first to occur of the following:

* * *

(3) The written consent of all members;

* * *

(5) The entry of a decree of judicial dissolution under RCW 25.15.275; or

(6) The expiration of two years after the effective date of [administrative] dissolution under RCW 25.15.285 without the reinstatement of the limited liability company. [Emphasis added.]

RCW 25.15.270 indicates that the Legislature did not intend that the winding up of a dissolved limited liability company's affairs had to be completed by or before the occurrence of one of the events specified in RCW 25.15.270. Such a result would be absurd, in light of that section's listing of events that "trigger" the winding up process in the first place.

It cannot seriously be contended that, where dissolution occurs by written consent of the members or by judicial decree, the winding up of the LLC's affairs has to be completed before, or by the time, the consent or decree is obtained. To the contrary, the written consent of the members or the entry of a decree of judicial dissolution marks the time "upon" which an LLC must begin winding up its affairs. RCW 25.15.270 does not treat the expiration of the two-year reinstatement period following administrative dissolution any differently for purposes of demarcating when winding up must begin. Rather, once any event specified in RCW

25.15.270 occurs, the winding up of the dissolved LLC's affairs is required to take place. When the winding up is completed (including the making of reasonable provision for payment of all known claims and obligations, RCW 25.15.300(2)), a certificate of cancellation is filed, RCW 25.15.080. Until the certificate of cancellation is filed, the persons winding up the LLC's affairs can continue to defend and prosecute suits, in the name of and on behalf of the LLC, RCW 25.15.295(2).

The Court of Appeals erred in concluding that RCW 25.15.270(6) requires an administratively dissolved LLC to complete the winding up of its affairs within two years after administrative dissolution without reinstatement. This Court should correct that erroneous interpretation of RCW 25.15.270(6), and allow FHC LLC to pursue its third-party claims.

B. RCW 25.15.303 Applies Retroactively, and Preserves Claims Against Even a Cancelled LLC if Brought Within Three Years After the LLC's Dissolution.

In 2006, the Legislature enacted RCW 25.15.303,¹⁰ effective May 6, 2006, which provides:

The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or

¹⁰ See <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6531&year=2006> for Senate Bill 6531, the Senate Bill Report, the House Bill Report, and the Final Report. Copies of those documents were attached as Appendices to the Brief of Appellant Chadwick Farms.

other proceeding thereon is not commenced within three years after the effective date of dissolution. Such an action or proceeding against the limited liability company may be defended by the limited liability company in its own name.

The express purpose of that enactment was to preserve remedies when limited liability companies dissolve.¹¹ The Legislature identified the problem it sought to address as follows:

The law governing LLCs has no express provision regarding the preservation of remedies or causes of actions following dissolution of the business entity. *There is an implicit recognition of the preservation of at least an already filed claim during the wind up period following dissolution, since the person winding up the affairs is authorized to defend suits against the LLC.* [Emphasis added.] However, there is no provision regarding the preservation of claims following cancellation of the certificate of formation.

The current Business Corporation Act provides that dissolution of a corporation does not eliminate any claim against the corporation that was incurred prior to dissolution if an action on the claim is filed within two years of dissolution. There is no “certificate of cancellation” necessary to end a corporation. (Note: *Another currently pending bill, SSB 6596, would increase this two year period to three years, and would make the provision apply to claims incurred before or after dissolution.*) [Italics in original.]

House Bill Report SB 6531 at 2-3 (Feb. 28, 2006). The summary of testimony in support of the bill also reflects concern that:

¹¹ See SB 6531’s title (“AN ACT Relating to preserving remedies when limited liability companies dissolve”); and the “Brief Description” contained in SB 6531’s Final Bill Report (“Preserving remedies when limited liability companies dissolve”).

A recent court decision has left many homeowners without a remedy for claims against a dissolved corporation. The same problem exists with respect to claims against LLCs. The Bar Association is working on a comprehensive review of the LLC law, but it is not done yet. This bill addresses only the problem of survival of claims following dissolution.

The bill is a step in the right direction. It affirmatively states that claims, such as homeowners' warranty claims, will survive the dissolution of an LLC.

House Bill Report SB 6531 at 3 (Feb. 28, 2006). Similarly, the summary of testimony in the Senate Bill Report states: "This bill is good for homeowners. It removes an incentive for LLCs to act in bad faith." Senate Bill Report SB 6531 at 1 (Feb. 11, 2006).

Although statutory amendments generally apply prospectively, an amendment will be applied retroactively if (1) the legislature so intended, or (2) the amendment is curative, or (3) the amendment is remedial. E.g., McGee Guest Home, Inc. v. Dep't of Social & Health Servs., 142 Wn.2d 316, 324, 12 P.3d 144 (2000). "An amendment is curative only if it clarifies or technically corrects an ambiguous statute." Id. at 325 (quoting In re F.D. Processing, Inc., 119 Wn.2d 452, 461, 832 P.2d 1303 (1992)). "A statutory amendment is remedial if it relates to practice, procedures, or remedies and does not affect a substantial or vested right." Robin L. Miller Constr. Co., Inc. v. Coltran, 110 Wn. App. 883, 891, 43 P.3d 67 (2002). "When an amendment clarifies existing law and where

that amendment does not contravene previous constructions of the law, the amendment may be deemed curative, remedial, and retroactive. This is particularly so where an amendment is enacted during a controversy regarding the meaning of the law.” In re Personal Restraint of Matteson, 142 Wn.2d 298, 308, 12 P.3d 585 (2000) (quoting Tomlinson v. Clarke, 118 Wn.2d 498, 510-11, 825 P.2d 706 (1992)).

There is no question that RCW 25.15.303 clarifies existing law with respect to the preservation of remedies when limited liability companies dissolve, a matter as to which some ambiguity existed. Indeed, it was enacted during controversies about the meaning of the law with respect to the preservation of remedies against both business corporations and limited liability companies when they dissolve, and does not contravene any previous constructions of the law by this Court. RCW 25.15.303 also relates to remedies, and does not affect a substantial or vested right. Because RCW 25.15.303 is curative and remedial and its retroactive application will serve its remedial purpose, the Court of Appeals correctly concluded that it applied retroactively to preserve Chadwick Farms’ claims against FHC, claims brought within three years of FHC’s administrative dissolution, and more than seven months before the two-year reinstatement period expired.

The Court of Appeals also correctly rejected FHC’s contention that

RCW 25.15.303 has no applicability to a cancelled LLC. Indeed, to so construe RCW 25.15.303 would eviscerate and render meaningless the three-year survival of claims provision that the Legislature enacted. Such an interpretation is wholly contrary to the Legislature's intent, especially when the Legislature, in the House Bill Report for SB 6531, identified the gap it was trying to close by noting that the Act had "no provision regarding the preservation of claims following cancellation of the certificate of formation." See House Bill Report, at 3.

To hold that RCW 25.15.303 has no applicability to a cancelled LLC would also lead to absurd and fundamentally unjust results, as an administratively dissolved LLC could simply ignore its obligations to pay or make reasonable provision for the payment of known claims, do nothing for two years following administrative dissolution, and watch all pending or known claims or obligations evaporate after the passage of the two-year reinstatement period. An LLC dissolved by consent of its members or judicial decree could equally evade all pending or known claims simply by filing a certificate of cancellation. To allow either the passage of the two-year reinstatement period or the filing of a certificate of cancellation to defeat the three-year survival of claims period would render the Legislature's enactment of RCW 25.15.303 meaningless. As the Senate Bill Report, SB 6531, at page 1, makes clear, the purpose of

RCW 25.15.303 is to provide a definite three-year period for the survival of claims, and thus, “remove[] an incentive for LLCs to act in bad faith.”

The Court of Appeals correctly held that RCW 25.15.303, being remedial and curative in nature, applies retroactively and provides a three-year period following dissolution of an LLC for survival of claims against it, irrespective of whether the LLC has been administratively cancelled or has filed a certificate of cancellation.

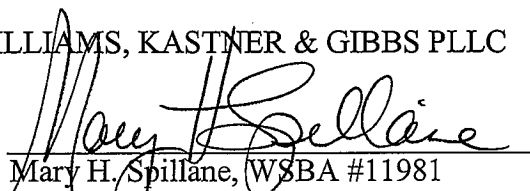
V. CONCLUSION

For the foregoing reasons, and those stated in Chadwick Farms’ previous briefing, this Court should affirm the Court of Appeals’ reinstatement of Chadwick Farms’ claims against FHC; reverse the Court of Appeals’ holding that RCW 25.15.270(6) mandates an administratively dissolved LLC, which does not seek reinstatement, to complete the winding up of its affairs within expiration two years of the effective date of administrative dissolution; and reverse the Court of Appeals’ failure to reinstate FHC’s third-party claims against the subcontractors.

RESPECTFULLY SUBMITTED this 30th day of May, 2008.

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By



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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2008, I caused a true and correct copy of the foregoing document to be mailed, postage prepaid, to the following parties and counsel of record:

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